LJH [Email address redacted]

30th January 2025
Amended where indicated 28th July 2025

independentreviewcriminalcourts@justice.gov.uk
The Rt. Hon. Sir Brian Leveson

Dear Sir Brian,

Call for Evidence regarding the Review of the Criminal Justice System

I qualified as a solicitor in the early 1990s, with a strong sense of justice and a desire to help people to achieve justice. I worked as a criminal lawyer from qualification until leaving the CJS in 2015, much of this time, I was also a duty solicitor. Over these decades, I was witness to the deterioration of the criminal justice system, from the lack of funding, demoralisation and pressure for speedy 'justice', including immense pressure for Guilty pleas, and the progression of cases, including without all the necessary information from the prosecution. The increasing lack of concern from the courts (due to these pressures for speed) as to whether the advocate who had been working with a client to represent them at trial, would actually conduct that trial - with barristers being substituted the evening before trial commencement, to the obvious horror of the clients - yes, lawyers are good at absorbing and assimilating information at rapid pace, but, nevertheless, this is clearly not justice. There was also incessant new legislation with which the profession had to get to grips, including the need for more interim hearings to decide on matters such as special measures for witnesses, and bad character evidence, for example. In particular, I witnessed the lack of any meaningful increase in legal aid fees and cuts therein, the knock-backs from the Legal Services Commission, as it was - having to justify waiting times, travel times to and from court, length of time to do a piece of work - basically begging for pennies, crumbs. Fixed fees meant that the scrutiny of police by defence lawyers decreased, and this was apparent in the attitude of police. Then dual contracting was presented and, at last, it felt like we were standing up for justice and for ourselves. We protested - my first and only protest (in London in 2014), because I subsequently came to know that begging the government to do, or not to do something, was not the position the people were ever supposed to take.

Sadly, we did not stand up, many agreed to these contracts, many defence lawyers went to work for the CPS, many left the profession, leaving areas where duty solicitors were hard to find. There was a general demoralisation within the profession.

It became harder and harder to do the job properly. There was a sense *that the only way to make a profit in magistrates' court work was to attend with a 'stack' of guilty pleas*[1] which was not the way it had been when I came into the profession. Having a client who was pleading Not Guilty

[1] Italicised text altered for wider audience

became a matter for comment, it was unusual. I remember having to apply to re-open cases to set aside guilty pleas. [Example redacted[2]]

Advocates would be cross-examined by legal advisors in the Magistrates' Court as to why it was that their client was pleading Not Guilty. To some of the younger members of the profession, I am sure the pressure to encourage the client to enter a Guilty plea was difficult to withstand.

It became a case of swimming upstream, against the prevailing mood and ethos, to do the job properly. Caring as much for justice as I did, in this environment, really took its toll, and I left the CJS in 2015, and took some time away from the law altogether. I am currently not working [Redacted] but wonder whether I would ever be able to go back to a system which I know to be restricting Trial by Jury and threatening the further deprivation of it.

I later heard stories of juries being sent out of trials in order that buckets could be strategically placed to catch leaks from Crown Court ceilings and, on the lawyers discussion groups I still followed, the complaints remained the same as they had been for years.

I share this background because I have experienced first-hand, the underfunding of the CJS that has gone on for decades. Whilst I was in it, I considered the funding of justice to be something that necessarily had to compete with other funding priorities. Now I know that the provision of justice within a nation, and the upholding of the rule of law thereby, is one of only a few jobs with which government, more properly an administration, should be concerning itself. The upholding of the rule of law, the constitution, is arguably the most important, the other being to defend the nation against those who would seek to destroy or harm it. The provision of a justice system is one of the only purposes of a legitimate government (administration), and so a government which fails to properly so provide this is not a legitimate government at all. And now, we have the spectre of the delays caused by incessant underfunding of the justice system over decades, leading to significant backlog of cases, and this being used to justify a possible further denial of Trial by Jury. In other words, a created breach of Article 40 of Magna Carta, being used to justify a denial of Article 39.

The King has sworn an oath to uphold our laws and customs - meaning the Law of the Land (in other words, Trial by Jury). To do this, the Criminal Justice System will need to be properly funded. This is not a choice, but the main purpose of the administration - before a health service, before a welfare state, and certainly before a war in Ukraine that is not even ours. Remember that one of the complaints set out in the American Declaration of Independence 1776 was that the British Crown was 'Depriving us, in many cases, of the benefits of Trial by Jury'.

It was in 2020 that I began my research into the true power and importance of the Jury. Against a backdrop of the deprivation of our liberties caused by lockdown, threats to track, trace and possibly even to quarantine us, not to mention coerce and mandate (for some) an experimental vaccine, with any notion of informed consent seemingly gone out of the window; I wanted to explore how the law could help, and why it was not. It was only then that I learnt about the ability of the jury to judge according to their conscience even if this goes against the direction of the judge, or the legislation: Annulment by Jury, Jury Nullification, Jury Independence, Jury equity, perverse verdict and, as Lord Justice Auld referred to it in his review of 2001 the 'dispensing power'. I felt ashamed that, in a career from student to qualified solicitor specialising in criminal

[2] Redacted personal anecdote of case illustrating the need to set aside guilty pleas hastily entered prior to my engagement

law, of some 33 years by that time, I did not know of this concept, and I know, from subsequent conversations with other lawyers, that I was not alone. I had fallen hook, line and sinker for the mantra: “The Judge decides the law and the Jury decides the facts.” I recall only one conversation about perverse verdicts - in relation to verdicts on different counts indicating that there was some illogicality at work, and being a possible basis of appeal.

It was not my fault, I was not taught about it, and as I will go on to show here, the truth has been obfuscated. Indeed, I cannot even remember much about Magna Carta, any study of which, during my training, must surely have been only a glancing blow along with learning about nonsensical ideas such as - the Queen could refuse royal assent, she just wouldn’t. We wrote essays about the benefits of Jury trial versus trial by Judge alone, as if this were a benign academic exercise rather than causing us to unwittingly participate in the denigration of our constitution.

Nevertheless, I had an inherent sense of justice - this is the point, really, this is what the Jury brings - As Lysander Spooner says in “An Essay on the Trial by Jury” 1852 (which should, in my opinion, be compulsory reading for all lawyers and public servants, and I would, respectfully, urge you to read this work if you have not already):

> *It is in the administration of justice, or of law, that the freedom or subjection of a people is tested. If this administration be in accordance with the arbitrary will of the legislator—the government is a despotism, and the people are slaves. If, on the other hand, the rule of decision be those principles of natural equity and justice, which constitute, or at least are embodied in, the general conscience of mankind, the people are free in just so far as that conscience is enlightened.*

Again, in the memoir of Trevor Grove, “The Juryman’s Tale”:

> *We had become professionalized... They say the office helps to make the man. Even within the much briefer compass of most trials, jury membership does seem to summon up people’s civic-mindedness - perhaps for the first and only time in their lives. Although this is a cynical age, honesty, fairness and justice are concepts nearly everyone believes in, even if they do not personally live up to them* (1998: 128).

Lord Justice Auld tells us in his 2001 review, (at part 5, paragraph 7) that Magna Carta, although ‘traditionally regarded as the foundation of our liberties’ did not actually establish a right to Trial by Jury, which, Lord Justice Auld says, we do not have a constitutional or any right to. It is right to say that Magna Carta 1215 did not establish this right, but was declaratory of it. A reading of many other historians and lawyers, including Blackstone and Coke and the Founding Fathers of America, would show disagreement with Lord Justice Auld’s contention here. The use of a tribunal of the people - very often numbered twelve, or multiples thereof, had been in use across Europe for centuries prior to Magna Carta. Indeed, Emperor Conrad III of Germany made practically the same declaration as Article 39 MC 1215, some 100 years prior thereto. We know of the Welsh King, Morgan of Glamorgan who had juries of twelve in AD 725**.** And, of course, King Alfred hanged several judges for, amongst other things, punishing a man without the judgement of a jury (Mirror of Justice). Of course, the tribunal has evolved over time - beginning as more of a witness role - the Compurgators - with knowledge of the events, and vouching for the good character of the accused, but the point is that the people, when left to their own devices, created natural justice tribunals of their own, through which they shaped the law for their community in

accordance with their consciences. This is borne out by the study in John Proffat's book: "A Treatise on Trial by Jury, Including Questions of Law and Fact" (1876).

Interestingly, Proffat states that part of the reason that some claim that the tribunal in the times prior to the Norman Conquest was not the same as the Juries of today was because there was not the division between fact finding and decisions about the law, that we have today. Since there is ample evidence throughout history, and in legal judgments that facts and law (and indeed, evidence and punishment) were all intended to be decided by the tribunal of peers, it is rich indeed to use the right of the jury to decide the facts and the law, to prop up the idea that the juries prior to Magna Carta were not juries at all, and Magna Carta was speaking of no such thing. As to the claim that Article 39 offered an alternative: 'In accordance with the Judgment of his peers or in accordance with the Law of the Land', the Trial by Jury IS the Law of the Land. If you consider the use of 'aut' and 'vel' in the clause, you will see that 'aut' is used where the alternatives are distinct whereas 'vel' is used where the alternatives are similar or the same. In the phrase of which we speak the use of 'vel' is more akin to saying: in accordance with the judgment of his peers, or, *in other words* (*or if you prefer to say it so, or that is to say*) in accordance with the Law of the Land. By the time of MC 1215, the use of Trial by ordeal was falling into disuse, and was outlawed by the church - but, again, this was not so much a distinct practice from the judgement of equals, but rather another form of evidence gathering, or testing the judgment of the equals by asking God.

In paragraph 9 of his section on juries, Lord Justice Auld points to the fact that the Jury is a powerful symbol in our justice system (in my opinion, it is more than just a symbol, if it is permitted to operate as it should). He quotes Blackstone's praise for the Jury and Sir Patrick Devlin's 1956 description of the jury as 'a little parliament' and 'the lamp that shows that freedom lives". Then, Auld LJ goes on to say, 'But, save possibly for the so-called 'dispensing power' of the jury, it is doubtful whether these metaphors are apt as main or practical justifications for the institution.' This is, to my mind, missing the point, since it is what he calls the 'dispensing power' (in other words, the power to judge according with their conscience, jury Independence, jury nullification, equity etc (how good it would be if we could all use the same terms in order that any citizen seeking to learn of this concept for himself would easily find all the information)) which is the very reason for the description 'little parliament' and goes to the heart of the power and profound nature of the Jury. In this way, the concept of Jury Independence is treated as a small thing they do, on the side of their usual, fact-finding function, which we don't like to tell them about (in fact, we tell them the opposite), and which we consider as something of an embarrassing anomaly. In reality, this ability, right, or prerogative (as Justice Leventhal refers to it in US v Dougherty 473 F2d 113) is the way in which the people are the final arbiter of the laws of their community.

Kenn d'Oudney describes it as 'the Citizen's most important secular adult duty' in his book 'Democracy Defined. The Manifesto' (2016, second ed). He says

> "*Once 'ordinary' citizens are emancipated and empowered by Trial by Jury, they inevitably become interested in affairs of law, order and governance. Justice becomes more than an abstract concept: it develops into an activity in which all have a practical part to play; either as jurors or plaintiffs. Empowered by Trial by Jury, the people are makers and enforcers of the laws under which they choose to live (democracy). With the collective authority of 'the people' behind them, with the Law of the Land constitutionally embraced, and with the apparatus of armed enforcement committed to backing them up to the point of civil strife,*

> *juries wield real power. Woe betide those who breach the peace and affront the beneficent code of the people! That is how the country came to be 'united as one man,' to force king and government to restore and respect the rule of law under the authority of the People's Trial by Jury Courts.'* (142)

And

> *"We are all born equal before the law and equal to judge over the law as jurors in Trial by Jury. It is incumbent on people everywhere to make sure that politics and justice systems reflect this democratic legal egalitarianism by constitutionally installing and practically implementing the common law Trial by Jury*. (133)

Yet, in his review, Lord Justice Auld indicates that Article 39 did not apply to all people and so is not democratic. In fact, the term freeman (and freeholder), did not have the meanings then that they have now - they did not then imply ownership of land. There is a lot of minutiae to discuss in relation to the history, for which there is not time in this letter, and given the short window of time available for the provision of evidence for your considerations. However, it is important to note that Emperor Conrad's similar (to A39) wording said, 'No Man' [recte: 'No-one']. Furthermore, we do not say of statutes or writings that the principle, at the time it was written, did not apply to women and so it was not democratic - instead, we are quick to just apply it to women. Why do some writers argue against the democratic principles expressed in Magna Carta, because they may not, at the time, have applied to serfs or women?… Times change and we apply this democratic right to all, just as we do with other principles.

There is discussion in the Auld review as to fact that we cannot regard the Jury as being able to decide to disregard legislation made by elected representatives, since the Jury is not elected, but selected at random (and, he also states, are not representative since the jury is only engaged in 1 percent of all criminal cases - this is a clever, but disingenuous argument since it is because of the state whittling away at Trial by Jury over time that we are, as the Founding Father's put it, denied in many cases the benefit of Trial by Jury). We have been led to believe that voting for representatives in elections is how we participate in the politics and law-making of our society. In fact, voting in elections, for representatives to enact a raft of policies (as opposed to voting for representatives who can be trusted to uphold the constitution) is really no more than mob rule - it is the majority imposing its will on the minority. As we know, the majority is not always (often?) correct. The principle to be upheld, instead, is the natural law principle, or the Golden Rule, that 'My rights end where another's begin.' If you have no right to do the thing which transgresses the free will of another by yourself, neither can a larger group of people elect representatives to do that thing to another on their (the larger group's) behalf.

This is what Lysander Spooner had to say about the notion that we protect ourselves from unjust laws or tyranny by voting in elections:

> *Suffrage is equally powerless and unreliable. It can be exercised only periodically; and the tyranny must at least be borne until the time for suffrage comes. Besides, when the suffrage is exercised, it gives no guaranty for the repeal of existing laws that are oppressive, and no security against the enactment of new ones that are equally so. The right of suffrage, therefore, and even a change of legislators, guarantees no change of legislation" (1852)*.

This is what Spooner has to say regarding why the task of judging the legislation cannot be left to the government:

> *The authority to judge what are the powers of the government and what are the liberties of the people, must necessarily be vested in one or other of the parties themselves - the government, or the people; because there is no third party to whom it can be entrusted. If the authority be vested in the government, the government is absolute, and the people have no liberties except such as the government sees fit to indulge them with. If on the other hand the power be vested in the people, then the people have all liberties (as against the government) except such as substantially the whole people (through a jury) choose to disclaim; and the government can exercise no power except such as substantially the whole people (through a jury) consent that it may exercise* (1852).

And Geoffrey Robertson KC as to why judges cannot fulfil this role when he says the jury 'won its laurels in the rhetoric of liberty because of its ability to acquit the guilty - to nullify laws which are unpopular or prosecutions which are perceived as oppressive.' He says: 'The jury, it is said on high authority, may "do justice", whereas a judge, obliged to follow the letter of the law, has no discretion' (1993:339) 'Freedom, the individual and the law' Penguin Books, London. 7th ed.

It is agreed that the ability of the Jury to give their verdict in accordance with their conscience, even if that necessitates deciding contrary to the judges directions or the legislation is a feature of our constitutional landscape - as was seen in the recent case of Solicitor General v Trudi Warner [2024] EWHC 918 (KB). The Honourable Mr Justice Saini gave a good summary of the relevant case law (although, of course, in an authentic Trial by Jury, the jury is no more bound by judicial precedent than by legislation). There is clear acceptance of the protective role of the Jury. Mr Justice Saini quoting Lord Bingham in R v Wang [2005] 2 Cr App R 8:

> *That the last word should rest with the jury remains, as Sir Patrick Devlin, writing in 1956, said (Hamlyn Lectures, pp 160, 162): 'an insurance that the criminal law will conform to the ordinary man's idea of what is fair and just. If it does not, the jury will not be a party to its enforcement... The executive knows that in dealing with the liberty of the subject it must not do anything which would seriously disturb the conscience of the average Member of Parliament or of the average juryman. I know of no other real checks that exist today upon the power of the executive.'"*

[As an important aside, I would like to make it very clear that I am concerned *about the* organisation 'Defend Our Juries" *and their* association with what could be called far left political ideologies (Animal rights activism, Just Stop Oil, Extinction Rebellion etc.) *sometimes* using tactics which infringe on the free will of individual members of the public - *sometimes* committing crimes which put the public in danger, or hold them to ransom. Martin Geddes has written an excellent article here…
https://newsletter.martingeddes.com/p/why-defend-our-juries-harms-our-juries?hide_intro_popup=true
…which expresses these concerns. I note with interest that there is nothing on their website regarding the review you are conducting or urging their supporters to be aware of this proposed

further diminution of Trial by Jury - which I feel is a strange omission for an organisation *wishing* to defend our juries.][3]

So, most are agreed, it seems, that the Jury provides a protection against unconstitutional and overbearing legislation through the 'dispensing power' and that this is the 'people's historic choice'. Various Judges and writers are troubled, though, by what they call a 'tension' between this power and what is said to be the duty of the Jury to follow the Judge's direction in relation to the law, and their oath to faithfully try and give true verdict according to the evidence. I find these arguments to be misleading and obfuscatory for reasons I will explain below.

I have already mentioned that Proffatt states that some argue the jury was not in existence before Magna Carta, or at least the Norman conquest - because they cannot find a tribunal with separate roles as to decisions of law and decisions of fact. He says that this stands to reason since there was not, at that time, a body of professional lawyers to build a body of law. Prior to the existence of the body of law, it seems, the people made their decisions from their intrinsic consciences. In fact when you look at it this way, the division between facts, evidence and law, and possibly even punishment seem arbitrary. The people were the law and this was represented through the jury deciding all the questions - they made the law, they embodied the law, they were the witnesses too in some instances, and, based on all of that, they decided whether or not the defendant deserved punishment (indeed, this was part of deciding whether he was guilty) and what that punishment should be. To decide whether the jury was a method of judging evidence, or part of the evidence gathering, or law-making is arbitrary when viewed in this way. The Jury was supposed to, and it is implicit in the wording of Article 39 MC, decide all matters - the law, the weight to give to the evidence (of which they heard all), the facts and punishment. It seems that it was only when the lawyers came along, and developed the body of law, that these divisions of decision came about. Is it really that the lawyers stole the law from the people? The lawyers certainly steered the evolution of the jury in a direction which made them, the jury, separate matters which should be decided more holistically. This probably came from a lack of trust in the people, a desire to protect the fairness of the trial for the defendant, maybe, or a need to control and a fear of losing that control. Certainly much education and work needs to take place for all of our consciences to develop in such a way that we can be sure not to make any errors in the process of trial - but this applies to judges as well as lay jurors. No system can protect fully against error - we are humans, not omnipresent Gods - part of why we need the Other Eleven to make life-changing decisions such as those required in a criminal trial. The people that make up the tribunal hold a person's life in their hands - no man should do this alone, or even flanked by two others. So, in my view, it is not right to use this manufactured (by lawyers) 'duty' of jurors to follow the Judge's direction as to the law - as a reason to say there is tension. There is no tension, because the decision - all the decisions, were meant to belong to the Jury, in a bespoke exercise particular to the individual person/s on trial:

> *Guilt is individual, not collective, and so in a way is assessment of guilt. The jury is a collective body, and it acts collectively; but the norms that govern it are norms that insist on treating each case, and each defendant, in the most profoundly individual way. Each juror brings his individual conscience to bear on the collective task of the jury'* (Friedman, L.M. (1989) Law, Lawyers, and Popular Culture, 98 Yale L.J. 1579 - 1606 at 1594)

[3] Some alteration to the sentences in this paragraph for a wider audience

Neither, if we consider the matter properly is there any tension between deciding according to conscience and according to the evidence. The jurors hear the evidence and apply their consciences to the facts established from the evidence they have heard. To say they are ignoring evidence in breach of their oath when they use their dispensing power does not make sense. Of course, even if the jury are not using their dispensing power they could be ignoring evidence which other people would find it prudent to give weight, as could any tribunal. It does not follow, however, that a jury that annuls a prosecution is necessarily ignoring evidence - to say so seems more a way of a lawyer coming to terms with the difficult (to them) idea that the jury simply does not agree with the particular legislation. For example, say the charge was that the Defendant had sung 'Auld Lang Syne' on the village green in summer contrary to the legislation of the day which precludes this. If several witnesses gave evidence that he sang that song on the green in the summer, say there was CCTV, say the Defendant admitted he had indeed sung that song on the green in the summer. If the Jury finds him not guilty of that offence, it doesn't mean that they are ignoring, or lying to themselves about the fact he sang Auld Lang Syne on the village green in the summertime - they know full well that he did. No, they found him Not Guilty because they found this 'law' to be oppressive and contrary to Natural Law because it infringed the man's free will. It is the legislation which they ignore, not the evidence. This argument is similar to the need to call a verdict in opposition to the Judge's direction or the law 'perverse'. As Sir Patrick Devlin said:

> *Perverse has come to be a lawyer's word for a jury which offers its own standards instead of those recommended by lawyers. It is an unfortunate, even impertinent word to use about an equal when all you are saying is that you disagree with the conclusions which it is his job to reach and not yours'* ('The Judge', 1981).

Legislation which is not constitutional, in other words, not in alignment with Natural Law, should not be in statute - unless to provide some guidance as to what we will find, ordinarily, unacceptable - a rebuttable presumption, if you like. It is a big ask, I know, but I would commend to you that you watch the Mark Passio presentation on Natural Law which can be found on You Tube, as well as consider the writings and videos provided on commonlawconstituion.org and lawandalchemy.org. Lysander Spooner provides a succinct definition of Natural Law in his short essay of the same name: simply, that a man 'shall abstain from commiting theft, robbery, arson, murder or any other crime against the person or property of another'. There can only be a crime if there is a victim and the 'sum of a man's legal duty to his fellow men [is] simply this: "To live honestly, to hurt no one, to give to every one his due"' (Spooner, 1882:5 Natural Law, Or, The Science of Justice: A Treatise on Natural Law, Natural Justice, Natural Rights, Natural Liberty, and Natural Society: Showing that All Legislation Whatsoever is an Absurdity, a Usurpation, and a Crime. A. Williams.)

This definition could be incorporated into a Judge's Advice (not direction) to the Jury - which would be given in this new paradigm where we have restored the true role of the Jury to its rightful place at the heart of our constitution.

Lord Justice Auld indicated that, in his view, legislation should be passed to do away with the Jury's prerogative to judge independently of the Judge's directions and the legislation. This would be unconstitutional and, therefore, unlawful, for reasons I will set out below. Lord Justice Auld says that, if it is 'too much' to remove this prerogative, then we should tell the Jury the truth about their role. Yes, we should…. there was never any right for anyone to do otherwise. Not only have we lawyers not been telling the jury (and the people at large) of their true role, we have been telling them the opposite. Lord Justice Auld tries to imagine the Judge's direction that would be given in order to tell them this truth- and says that this makes clear the enormity of what this means. For

starters, it would not be a direction! Jury Independence is often misrepresented, in a way, as if a Jury has a right to be ignoring really serious offences where there has been real harm. In fact, this is not what is meant at all; most people intrinsically know when real wrongs have been done. What is said is that where there has not been harm, or where the legislation itself causes harm, then the Jury has the right to annul the legislation (and, the people at large have the right to privately prosecute those responsible for putting that legislation on the statute book). I have taken the liberty (and trouble) of drafting a possible Judge's Advice for the Jury that could be given in this new paradigm, which, hopefully, will illustrate the true position, and is attached.

Of course, there are risks involved in the people having this power - they can do wrong, or misuse this power, but there is really no system without risk, and, in admitting to the people their true power through the jury we protect our society from succumbing to tyranny. You see, Trial by Jury is not just a method of trial by which we bring a criminal to justice, it is also a way in which a society becomes free… as Alexis de Tocqueville said (Democracy in America).

One of the reasons why atrocities occur, for example, the horrors of the Nazi regime, is because the people feel powerless to do anything about it. People have been raised to believe in the authority of the state - and so, when they see tyranny occurring, which usually creeps up on us, they feel like there is nothing that they can do - they are powerless, and also believe they must obey. A system where we tell the people that laws are imposed upon them from above, where we tell a jury that they must go against their consciences, and follow what the judge tells them the law is, is a way in which we create (or further entrench) a society of order followers. Order following, was always wrong, and specifically outlawed as a defence at Nuremberg. Why do we find it so difficult to remember these lessons now? So, you see, there is really no choice but to return the law to the people.

If we see the sense, lawfulness and right of the people to decide upon the laws of their own community through the Jury, then we can see that to sequester away a large portion of the law to summary trial, or the proposed 'intermediary' courts would be wrong. Magna Carta did not say - in less serious cases, we don't need to bother with the peers! I was struck by a quote from Roy Amlot when he was chairman of the Bar Council - in an article about how the Jury have power through their ability to annul unlawful or oppressive legislation, he said: 'just imagine what would have happened if poll-tax defaulters had had the right to jury trial?' yet fails to consider why they were denied this right. (Amlot, R. (1998) Leave the Jury Alone. *Med. Sci. & L.*, *38*, p.123

Much of legislation which falls to be dealt with in the Magistrates' Courts is precisely that which is out of alignment with Natural Law - because it lacks a victim, purports to make strict liability offences and is often a form of pre-crime, in effect. By comparison, often the legislation dealt with in the Crown Court *is* in alignment with Natural Law (save for fixing of punishment by statute or super-strict guidelines which seem really to be fettering almost all discretion and hurtling us towards an entirely algorithmic framework which will slot right in to decision-making by AI but not decisions according to human conscience).

The State knows it needs to keep the public pacified by involving the community - hence lay magistrates and the proposal for two magistrates to flank the Judge in the proposed intermediary courts, but this is mere lip-service to the concept. In the Magistrates' Court, we never know when the State-paid District Judge will be there instead of the lay Magistrates, and, the Magistrates, like the Jury, are not told that they should be judging according to conscience. In any event, it cannot be by accident, but more in the nature of the Divine, that the people, throughout history, have chosen tribunals of twelve, or multiples thereof. Obvious comparison can be made to twelve

apostles, twelve knights of the round table, and, of course, the twelve signs of the zodiac - representing different character types and traits in the human being.

Many of the concerns about juries addressed by Lord Justice Auld, and which we see expressed from time to time in the press and anecdotally by lawyers are laid to rest by the research of Cheryl Thomas KC. I have included an additional document *referencing the work of Professor Thomas - a Brief Plan for a quantitative study regarding jurors' ability to understand complex evidence, which was part of an assignment for my Criminology Masters Degree.*[4]

Another argument put forward in the review by Lord Justice Auld, is that the idea of any right to trial by jury only came about relatively recently with the creation of Either Way offences, because, prior to that, a person had no option but to submit to trial by their equals. This is another creative argument - using the unconstitutional removal of the absolute prohibition on punishment by the state (or anyone else) without a jury of one's peers having judged such punishment to be necessary, to argue that because there was no choice previously, there was never a right! Then, the state expanded the class of summary only and the class of either way offences and now suggest adding in an 'intermediary' class of cases where there will be no ability of a citizen to insist on Trial by Jury. I always found it telling that a defendant accused of an either-way offence had to 'consent' to summary trial. I also recall with interest the practice of the bench at Newport Magistrates' Court in the 1990s (I know not whether this is still their practice), whereby they would, following a guilty plea and presentation of the prosecution facts, insist on 'coming to a formal finding' before hearing speeches in mitigation. They were surely trying to uphold something of how things were supposed to be. There was a time when I would have agreed that a defendant could consent to foregoing his right to a Trial by Jury, but having seen the pressure for guilty pleas, and push for speedy 'justice' at the cost of justice, I am now not so sure.

I must address the notion that, even though judges and writers agree that the ability of the jury to judge of the facts and the law is part of our constitutional landscape, the people's historic choice, a prerogative etc., some also believe that this prerogative can be removed by legislation. There is a general recognition amongst the people and the judiciary, that this prerogative is a protection for and by the people against unconstitutional, unjust or oppressive legislation - so why can we not see that it is absurd, illogical or possibly even a dastardly sleight of hand to suggest that this protection be legislated away - that the government can legislate away the people's protection against immoral or unjust legislation! It is like the notion that, if the monarch did not go along with the parliamentary convention that he must give his royal assent to all acts of parliament, that the legislature could remove the right of the King to refuse royal assent by legislation! The purpose of a constitution is to limit government (the administration), to limit intrusion of the state and others into the lives of the individuals within a society. If a government can change the constitution by legislation, what is the point of the constitution? Yet, this is what successive governments over centuries have purported to do. The government, more properly an administration, is a servant to the people. This is why our representatives in 'government', our police, our judiciary, our local councillors, the officers within local authorities, and the King are called public servants. There is a clue in the title - public servant, which many seem to have forgotten. Furthermore, at this point in time, it is not possible to obtain any seeming consent from the lay public, or even lawyers, for legislation to further remove Trial by Jury - since the obfuscation has been so great, that they know not what they would be giving up.

[4] Some alteration to this sentence for clarity

Practical suggestions

1. Tell the government that there is no option but to properly fund the justice system - since this is one of the only reasons justifying the existence of government (more properly an administration),
2. Restore full, authentic trial by jury in all courts - criminal and civil - with jurors being fully apprised of their role,
3. Commence a public education campaign to educate the public as to the power that they have through Trial by Jury, and the importance and privilege attaching to the role of juror (this would see off any lingering notion of people not wanting to do their jury service, though we see from the work of Cheryl Thomas KC that this is an exaggerated claim), along with this must be a grounding in natural law and proper discourse regarding objective morality,
4. Lawyers to learn constitutional law, properly, in their training,
5. Work towards repealing unconstitutional legislation. This would reduce the number of prosecutions taking place and go some way to ensuring the people, once again, exercise their own moral compass instead of waiting to be told what to do, or what not to do - in other words, less order followers. You will see if you watch the Natural Law seminar I have suggested that, as public morality increases, so external control decreases and, part of increasing morality, is to begin the decrease of external control
6. Further to 5 above, it will be seen that much of the summary-only, strict liability offences on the statute books are really pre-crime. I can see justification for this to an extent, in relation to driving vehicles on the roads - since these can be dangerous in the wrong hands. The proper natural law position would be, however, that, without anyone being harmed (or attempted harm), then there is no crime. It is difficult, though to envisage removal of, say, speed limits, or drink-drive legislation. However, so many drink-drive offences are prosecuted, one has to wonder whether the legislation does, in fact, have the preventative effect that must be hoped for. I was struck, when practicing, how few people who were in court for drink driving knew that the offence carried a mandatory driving ban - if it is hoped to prevent the offence, I wondered why this was not more widely publicised, and if it were whether this would result in less court time prosecuting such offences. If a study showed that the existence of these 'pre-crime' offences did not actually prevent harm occurring, then there is no justification for them and they are an unnecessary use of court time (though a careful way of removing them would be necessary lest people, in their current order-following state take it as an invitation),
7. Review cases currently pending where no harm has been caused and consider discontinuing these,
8. I note that one of the justifications put forward in the review by Lord Justice Auld for further removal of Trial by Jury is the fact that juries have been said to find some matters before them a waste of their time - too trifling to need a jury. We must ask, if a matter would be considered to [recte: too] trivial for a jury's time, then is it actually in the public interest that this be prosecuted? Sometimes, such cases are the very ones requiring annulment. We should consider pending cases in the backlog and apply this test: Would a jury having to hear this matter consider it too trivial to warrant their time, and, if so, ought we to discontinue it?
9. Since, in an authentic Trial by Jury, the 'judges' role is that of convenor and advisor, then, certainly in less serious matters this role can be fulfilled by other lawyers, reserving the more experienced judges for the very serious cases. Lawyers, including Judges have an important skill set which will be needed in the new paradigm,

10. Repair the buildings and other infrastructure so that they can be used fully,
11. Extend court sitting,
12. Suggested Judge's Advice to the Jury attached.

I feel that there is so much more I could say. I apologise that this letter is not properly referenced as I would have liked. I would have liked to have had time to go through the points raised in the 2001 review by Lord Justice Auld in some more detail, since I know you will be giving consideration to that document. However, I just have not had time given the small window of time for this call for evidence. I do trust that the small window of time is not indicative of any pre-determination in this matter. I know there have been many reviews previously touching on whether Trial by Jury should be further curtailed, and these have not always been taken very seriously (*in the sense of not paying it too much attention*[5]) by the legal profession, who, I feel, always had a sense that it would never happen, because everyone knew the importance of it, and understood it as constitutionally significant, even if they did not fully understand why. However, I am aware of the degradation and destruction of our way of living and our systems and traditions, across the world, but especially here in the United Kingdom, the home of what was once known to be the most respected justice system in the world. I note that the public announcement of your review occurred on 12/12/24, and feel that this showed that the state meant business. Well, I mean business, as I trust can be seen from the content of this letter, and I am happy to assist further if you so require. I trust that you will be able to see that the only way to prevent further degradation of our society is to return the people to their rightful place of constitutional power through the restoration of authentic Trial by Jury.

Respectfully, in Truth and Honour,

LJH

PS - I have not drafted this as an open letter, but I would, at some point, like to share some or all of the content of this letter with others as and when appropriate, but have not yet formulated how that will be.

Attachments:

1. Suggested Judicial Advice to Jurors: https://files.cdn-files-a.com/uploads/1796555/normal_6887a3daee571.pdf
2. Document regarding Jury Myths and the work of Cheryl Thomas, KC. https://files.cdn-files-a.com/uploads/1796555/normal_6887a420e4ce4.pdf

[5] Italicised text added for clarity